

SURREBUTTAL TESTIMONY OF

M. ANTHONY JAMES, P.E.

ON BEHALF OF

THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

DOCKET NOS. 2017-207, 305, 370-E

**IN RE: JOINT APPLICATION AND PETITION OF SOUTH CAROLINA
ELECTRIC & GAS COMPANY AND DOMINION ENERGY,
INCORPORATED FOR REVIEW AND APPROVAL OF A PROPOSED
BUSINESS COMBINATION BETWEEN SCANA CORPORATION AND
DOMINION ENERGY, INCORPORATED, AS MAY BE REQUIRED, AND
FOR A PRUDENCY DETERMINATION REGARDING THE
ABANDONMENT OF THE V.C. SUMMER UNITS 2 & 3 PROJECT
AND ASSOCIATED CUSTOMER BENEFITS AND COST RECOVERY
PLANS**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Anthony James. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as the Director of Energy Policy for the Office of Regulatory Staff (“ORS”).

Q. DID YOU FILE DIRECT TESTIMONY AND EXHIBITS IN THIS PROCEEDING?

A. Yes. I filed direct testimony and five exhibits with the Public Service Commission of South Carolina (“Commission”) in Docket No. 2017-370-E on September 24, 2018.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony provided by South Carolina Electric & Gas Company (“SCE&G”) witnesses Dr. Kenneth Petrunik, Ms. Iris Griffin and Mr. Jimmy Addison related to SCE&G’s decision to abandon

the construction of V.C. Summer Nuclear Units 2 & 3 located in Jenkinsville, S.C. (the “Project”).

Q. WILL YOU UPDATE YOUR TESTIMONY BASED ON INFORMATION THAT BECOMES AVAILABLE?

A. Yes. ORS fully reserves the right to revise its recommendations via supplemental testimony should new information become available not previously provided by the SCE&G, or from pending state and federal investigations and lawsuits.

Q. DO YOU AGREE WITH DR. PETRUNIK’S STATEMENT THAT THE BECHTEL POWER CORPORATION’S (“BECHTEL”) SCHEDULE ANALYSIS IS UNRELIABLE?

A. No, I do not. On October 19, 2018, ORS deposed Mr. Ty Troutman of Bechtel. Mr. Troutman was assigned to oversee the Bechtel assessment and has over 25 years of experience building new nuclear power plants and operating them. At the time of Bechtel’s assessment, Mr. Troutman was the General Manger for Nuclear Power Worldwide and President of Bechtel. His testimony soundly debunks Mr. Petrunik’s claim that Bechtel had limited access to information and produced an unreliable schedule. Mr. Troutman states, “We ultimately got everything we needed to do the assessment we performed.” Mr. Troutman also states that a schedule analysis is essential to performing a project assessment, “...analyzing the schedule was needed to even do -- to feed as an under pinning either the foundation or the actual fabric that holds together the rest of the assessment...”

Mr. Troutman’s full deposition is attached as an exhibit to the surrebuttal testimony of ORS witness Mr. Gary Jones.

Q. DOES ORS BELIEVE MR. TROUTMAN’S DEPOSITION STRONGLY SUPPORTS ORS’S POSITION AND SHOULD BE SHARED WITH SCE&G RATEPAYERS AND THE PUBLIC?

A. Yes, we do.

Q. DO YOU AGREE WITH DR. PETRUNIK’S STATEMENT REGARDING ORS’S OVERSIGHT RESPONSIBILITIES RELATED TO THE PROJECT?

A. No, I do not. On page 7 of Dr. Petrunik’s rebuttal testimony, he states, “The documentary record shows the ORS, as the regulatory agency charged with direct oversight of these matters...” Dr. Petrunik greatly expands ORS’s role in asserting that ORS had “direct oversight” of certain Project matters as a state regulatory agency. This is simply not true.

Of the multitude of documents Dr. Petrunik lists as part of his review, he fails to list the Base Load Review Act (“BLRA”) which is a key legal standard SCE&G identifies as the basis for its petition. The BLRA states that ORS conducts on-going monitoring of the Project – not “direct oversight.” Specifically, Section 58-33-277(B) of the BLRA states: “The Office of Regulatory Staff shall conduct on-going monitoring of the construction of the plant and expenditure of capital through review and audit of the quarterly reports under this article, and shall have the right to inspect the books and records regarding the plant and the physical progress of construction upon reasonable notice to the utility.” (emphasis added).

Q. HOW DO YOU RESPOND TO DR. PETRUNIK’S UNDERSTANDING OF ORS’S ROLE REGARDING THE PUBLIC INTEREST?

1 **A.** The South Carolina Code of Laws defines ORS's obligation to represent the public
2 interest. Specifically, Section 58-4-10 states, "public interest means the concerns of the
3 using and consuming public with respect to public utility services, regardless of the class
4 of customer and preservation of continued investment in and maintenance of utility
5 facilities so as to provide reliable and high quality utility services."

6 Dr. Petrunik did not attend any meetings with ORS during the past 10 years the
7 Project was under construction, nor since SCE&G's decision to abandon the Project. Yet,
8 Dr. Petrunik appears comfortable in defining ORS's responsibilities, defending SCE&G's
9 construction practices and SCE&G's decision to conceal Bechtel's assessment of the
10 Project. It is unfortunate that SCE&G presents a witness that is unfamiliar with the Project
11 during construction and unknown to ORS, while not putting forward witnesses that were
12 directly involved, namely, Mr. Steve Byrne, Ms. Carlette Walker, Mr. Alan Torres and Mr.
13 Kenneth Browne.

14 **Q. DO YOU AGREE WITH DR. PETRUNIK'S STATEMENT THAT SCE&G SET A**
15 **TONE AND CULTURE OF OPENNESS AND COMMUNICATIONS IN**
16 **UNDERTAKING ITS ROLE AS OWNER OF THE PROJECT?**

17 **A.** No, I do not. On September 25, 2018, ORS deposed Mr. Kenneth Browne, a
18 member of SCE&G's Business and Finance Group working on the Project. During his
19 testimony, Mr. Browne states that before attending a meeting with ORS related to
20 SCE&G's 2015 request to update the Project's schedule and budget, he was provided
21 "talking points" and was instructed what to tell ORS. The talking points specifically
22 excluded Mr. Browne's belief that the cost to complete the Project being presented to ORS
23 was not attainable. Certainly, SCE&G's behavior does not reflect a culture of "openness."

Mr. Browne's full deposition is attached as an exhibit to the surrebuttal testimony of ORS witness Mr. Gary Jones.

Q. DOES ORS BELIEVE MR. BROWNE'S DEPOSITION STRONGLY SUPPORTS ORS'S POSITION AND SHOULD BE SHARED WITH SCE&G RATEPAYERS AND THE PUBLIC?

A. Yes, we do.

Q. DID SCE&G HAVE THE REGULATORY RESPONSIBILITY TO INFORM THE COMMISSION OF THE BECHTEL ASSESSMENT?

A. Yes, they did. As I mentioned in my direct testimony filed in Docket No. 2017-305-E (on August 14, 2018), it was SCE&G's responsibility to inform the Commission of the status of the Project. Section 58-33-280(B) requires, "[t]he revised rates filing shall include the most recent monitoring report filed under Section 58-33-277(A) updated to reflect information current as of the date specified in the filing." (emphasis added). Pursuant to Section 58-33-277(A), SCE&G is required to file reports with ORS quarterly until the plant begins commercial operation. Also, the Commission required in its Order 2009-104(A) that SCE&G's quarterly monitoring reports be filed with the Commission.

The BLRA requires that these reports must contain the following information: (1) the progress of construction of the plant; (2) updated construction schedules; (3) schedules of the capital costs incurred including updates to the information required by Section 58-33-270(B)(5); (4) updated schedules of the anticipated capital costs; and (5) other information as the Office of Regulatory Staff may require.

As I stated earlier, but it bears repeating, ORS's duties are found at Section 58-33-277(B) and include "on-going monitoring of the construction of the plant and expenditure

1 through review and audit of the quarterly reports under this article, and shall have the right
2 to inspect the books and records regarding the plant and the physical progress of
3 construction upon reasonable notice to the utility.” (emphasis added).

4 SCE&G failed to advise the Commission that Bechtel had been hired to conduct an
5 assessment of the Project. In fact, in no document filed with the Commission, or otherwise
6 available in the public domain, is there any discussion regarding Bechtel’s assessment of
7 the Project. There is absolutely no mention of Bechtel’s on-site activities, Bechtel’s
8 findings and recommendations, – and most importantly – Bechtel’s analysis of the schedule
9 which produced Project completion dates that were years beyond the completion dates
10 SCE&G provided to the Commission.

11 As outlined above, SCE&G had the regulatory responsibility to share the status
12 information regarding the Project. This responsibility resides with SCE&G – and SCE&G
13 alone.

14 Based on the information received by ORS through discovery, we now know the
15 following: in September 2014, SCE&G was seeking assistance with evaluating the
16 construction schedule and the project status and ultimately hired Bechtel; an attorney was
17 hired to conceal the retention of Bechtel and Bechtel’s reports; and, SCE&G went to
18 extremes to prevent the release of the Bechtel report which included a schedule analysis.

19 **Q. HOW DO YOU RESPOND TO MS. GRIFFIN’S STATEMENT REGARDING**
20 **INCENTIVE COMPENSATION PAYMENTS?**

21 **A.** Ms. Griffin mischaracterizes ORS’s proposal. Ms. Griffin incorrectly conflates
22 bonuses associated with SCE&G’s normal course of business (and presumes the Project is

1 successfully under construction) to bonuses associated with a failed project that has been
2 abandoned.

3 As I state in my direct testimony, based on the abandonment of the Project and
4 SCE&G's performance that preceded the abandonment, SCE&G/SCANA shareholders
5 should be responsible for bonuses paid-out for the abandoned Project.

6 **Q. PLEASE RESPOND TO MR. ADDISON'S STATEMENT REGARDING ORS'S**
7 **APPLICATION OF THE PRUDENCY DEFINITION CONTAINED IN ACT 258.**

8 **A.** ORS applied the provisions of Act 258 appropriately. As stated in my direct
9 testimony, ORS believes that SCE&G's decision to conceal the Bechtel assessment which
10 included revised Project completion dates meets the definition of fraud as defined in South
11 Carolina Code of Laws Section 58-33-220(c), where fraud includes, "concealment,
12 omission, misrepresentation, or nondisclosure of a material fact in any proceeding or filing
13 before the commission or Office of Regulatory Staff."

14 Specifically, ORS believes SCE&G's failure to inform the Commission or ORS of
15 Bechtel's work, while SCE&G requested updates to the Project's schedule and budget as
16 well as revised rates revenue increases during 2015 and 2016, constitutes a fraudulent act,
17 as defined in Section 58-33-220(c). Accordingly, ORS established March 12, 2015, the
18 date SCE&G filed its 2015 request in Docket No. 2015-103-E as the date SCE&G began
19 reporting its schedule and budget in a fraudulent manner.

20 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

21 **A.** Yes, it does.